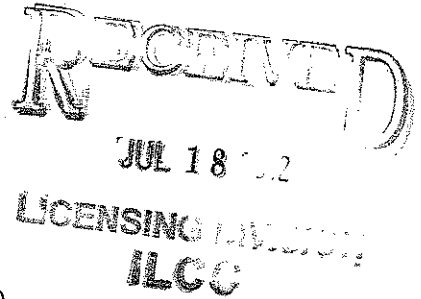


**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**



In the Matter of:	)	No. 12 C 100220
	)	No. 12 C 100221
City Beverage – Markham, LLC)	
d/b/a/ City Beverage Markham	)	LIC: 12-2A-102035; 12-2B-69574
2064 W. 167 th St.	)	Exp: 9/30/2012
Markham, IL 60428	)	IBT: 5524-4025
 In the Matter of:	)	No. 12 C 100222
	)	No. 12 C 100223
City Beverage – Markham, LLC)	
d/b/a/ City Beverage –Arlington Heights	)	LIC: 12-2A-102034; 12-2B-69575
1401 E. Algonquin Rd.	)	Exp: 9/30/2012
Arlington Heights, IL 60005	)	IBT: 3665-2202
 In the Matter of:	)	No. 12 C 100218
	)	No. 12 C 100219
Chicago Distributing LLC)	
d/b/a/ City Beverage - Chicago	)	LIC: 12-2A-96603; 12-2B-64729
4841 S. California Ave.	)	Exp: 10/31/2012
Chicago, IL 60632	)	IBT: 5515-9060
 In the Matter of:	)	No. 12 C 100216
	)	No. 12 C 100217
City Beverage LLC)	
d/b/a/ City Beverage	)	LIC: 12-2A-98399; 12-2B-61392
1105 E. Lafayette Ave.	)	Exp: 3/31/2013
Bloomington, IL 61701	)	IBT: 5509-8851

**MOTION TO AMEND COMPLAINT AND RESPONSE TO MOTION FOR BILL
OF PARTICULARS**

The Legal Division of the Illinois Liquor Control Commission (“Commission”) requests 1) leave to amend the Citation and Notice of Hearing (attached herein) against City Beverage – Bloomington, LLC, City Beverage – Markham, LLC and Chicago

Distributing, LLC (collectively, "City Beverage"); and 2) submits a response to defendants motion on a bill of particulars in support of the sufficiency of the amended Citation and Notice of Hearing.

Amended Citation and Notice of Hearing

1. The amended Citations and Notices of Hearing simply allege City Beverage is currently owned and managed by an unauthorized interest, the owners of Anheuser Busch, LLC, an Illinois Non-Resident Dealer. Based upon the interpretation of the Illinois Liquor Control Act ("Act") by Illinois findings of the Commission, an Illinois Non-ownership or management interest in an I Because Anheuser Busch LLC (AB, LLC) with Wholesaler Equity Development Corp in City Beverage, the interest must be dives a retrospective fine or suspension of the I City Beverage negligently or willfully eng to a past or current illegal ownership into will not recommend a fine or suspensio Beverage refuses to voluntarily dives Commission agrees City Beverage is ille should mandate divestiture through a sta,

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Response to the Motion for the Bill of Particulars

2. The amended Citations and Notices of Hearing are sufficient for City Beverage to understand the charges before the Commission and thus, prepare a defense.

The established rule on the sufficiency of charges according to the Administrative Procedure Act (APA) is that the defendant is entitled to a “short and plain statement of the matters asserted.”¹ The courts have flexibly interpreted this APA statement by stating that “[p]rocedural due process does not require that the charges or complaint in an administrative proceeding be drawn with the same precision, refinements, or subtleties as pleadings in a judicial proceeding. Rather, the charge need only reasonably advise the respondent as to the charges so that he or she will intelligently be able to prepare a defense.”²

The amended charges and notices against City Beverage before the Commission constitute a sufficient legal complaint against City Beverage because the notices state: a) the facts; b) the time period of the violation; and c) the legal foundation for the charges from which City Beverage can prepare a defense. The facts are that City Beverage is commonly owned and managed by Anheuser Busch LLC, an Illinois Non-Resident Dealer, through its affiliate WEDCO.³ The time period under which the illegal ownership interest existed is arguable but began not later than June 1, 2011 when the Illinois General Assembly acted to de-authorize an in-state Brewer from holding a Distributor and Importing Distributor license thus leveling the playing field between in-state Brewers and Non-Resident Dealers who, as the Commission declared in 2010, also could not be Distributors and Importing Distributors. In addition, the Assembly did not choose to authorize any prior existing distribution interests held by Anheuser Busch when it was clear that their actions were in response to the Anheuser Busch federal litigation.

¹ 5 ILCS 100/10-25(a)(4)].

² Siddiqui v. Illinois Dept. of Professional Regulation, 207 Ill.App.3d 753, 759-60, 718 N.E.2d 217, 225 (1999); Abrahamson v. Illinois Dept. of Professional Regulation, 153 Ill.2d 76,93, 606 N.E.2d 1111, 1119 (1992)

³ See Motion for Summary Judgment and corresponding Dusanka Marijan Affidavit.

The law under which City Beverage is charged is contained in: a) the Act definition of “Distributor” and “Importing Distributor”; and b) the interpretations of the Act by the Illinois Appellate Court and the Commission. The Act defines Distributor and Importing Distributor as a “person, other than a manufacturer or non-resident dealer licensed under this Act.”⁴ While undoubtedly, defendants will argue that the definition does not constitute a prohibition of an ownership and/or management interest, the prohibition is nonetheless a plain reading of the definition. If, however, there is debate about the plain meaning of the language, then the debate is unnecessary because the Illinois courts have already stated that the Act does not need to specifically prohibit an ownership interest for it to be disallowed. The Act’s interpretation starts from a point of prohibition.⁵ In other words, if the Liquor Control Act does not permit a Non-Resident Dealer to have an interest in a Distributor or Importing Distributor, then it is prohibited from having such interest. In addition, the Commission, which is the body charged with the Act’s interpretation, has already specifically found twice before that the Act prohibits Non-Resident Dealer and, specifically Anheuser Busch, LLC from “own[ing] a distributorship”.⁶

The charges and bases for the charges against City Beverage, AB, LLC and WEDCO (Defendants) are not new and the Defendants are well prepared to mount a defense. In fact, twice before their receipt of the original Citation and Notice of Hearing, the Defendants submitted written arguments in an attempt to diminish the bases of the complaint. Even the request to specify the charges in their Motion for the Bill of

⁴ 235 ILCS 5/1-3.16; 235 ILCS 5/1-3.17.

⁵ People v. Select Specialties, Ltd., 317 Ill.App.3d 538, 544, 740 N.E.2d 543, 548 (2000).

⁶ Findings from the 12/7/2011 Meeting Regarding the Anheuser Busch Ownership Interest in City Beverage, LLC, Finding F, (2012); Illinois Liquor Control Commission Declaratory Ruling Part A, 3/10/2010.

Particulars reveals the substance of their defense that the Liquor Control Act does not prohibit the alleged illegal ownership interest. Thus the Defendants have been informed of the charges and have a very clear understanding of the issue and nuances of the case brought against them in the Amended Citations and Notices of Hearing. These notices are more than sufficient to satisfy the due process requirements of the Illinois Administrative Procedure Act.

Respectfully Submitted on July 18, 2012,

Richard R. Haymaker
Konstantina J. Tsatsoulis
Ivan H. Fernandez

Legal Division
Illinois Liquor Control Commission

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned certifies that the foregoing MOTION TO AMEND COMPLAINT AND RESPONSE TO MOTION FOR BILL OF PARTICULARS was hand delivered to the Illinois Liquor Control Commission and emailed on July 18, 2012 to: Stephen B. Schnorf, Acting Chairman of the Illinois Liquor Control Commission, at stephenbs@sbcglobal.net, Allyson Reboyas, Commission Secretary at allyson.reboyas@illinois.gov, Thomas J. Verticchio, counsel for City Beverage, at tverticchio@smbtrials.com, Irene Bahr, counsel for Anheuser Busch LLC/WEDCO at ibahr@aol.com and Edward M. Crane, counsel for Anheuser Busch LLC/WEDCO at edward.crane@skadden.com.

/s/ Richard R. Haymaker

Richard R. Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission